

NOT FOR PUBLICATION

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Discussion Memo: Notes on Controlling the Planners

by Rob Borosage

I. Bureaucratic responsibility: after the policy is set and the plan defined

A. Bureaucratic Model: Represented by Administrative Procedure Act

1. The APA is designed to force bureaucrats to act like bureaucrats, in the Weberian sense: rational, passionless, mechanical. The advantage in implementation of a policy is that everyone in similar circumstances is treated equally, that standards and reasons are articulated and followed, that administrative remedies -- appeal, hearings, appeal to the courts eventually are available. Shortcomings are also clear: tendency for bureaucrats to substitute formal rationality, strict legality for reasoned action or adherence to the spirit of the rule. (e.g. a policeman arrests you for going 26 in a 25 mi. per hour zone) Second, administrative appeals and remedies are time-consuming, often expensive, and unless structured with independence, tend to respond to need to support bureaucrat rather than remedy situation.

2. APA regulations are backstopped by personal responsibility for criminal malfeasance: fraud, bribery, favoritism, etc. These criteria can be made more stringent (racial discrimination, life style discrimination, etc.) and enforced by an independent prosecutor rather than simply the local DA, or federal Dept. of Justice.

3. A good mechanism for the independent prosecutor is the Ombudsman, now used throughout Scandinavia, in Tanzania, Nassau County, with experiments in a number of local American cities. Ombudsman essentially creates a legal bureaucracy to watch the other bureaucracy. Usually the institution is made responsible to the legislature rather than the executive to increase independence. Classic model has power to investigate complaints, initiate investigations on own initiative, prosecute criminal negligence, and publicize foul-ups etc. Advantage for citizen is that a letter to the Ombudsman insures that some investigation will take place by an independent on-looker, thus saving time and expense. Advantage for bureaucracy is the Ombudsman often takes time

EXX

## II. Planning: How to Limit the Planners

### I. Multi-Tier System

The only way to approach this question is to attempt to define spheres of rights or prerogatives at various levels in the society. For example, the first question would be what rights <sup>the</sup> individuals as individuals have in the society? What can no plan do at any time? Or what can a plan do only at a price tag? Note: the concept of individual rights, the classic minority of one, is not democratic. That is, a perfect democracy would be able to do anything, presumably. Arguments - from Isaiah Berlin to SDS - have been made to justify individual rights as necessary foundation for any democracy (free speech for example). This philosophical effort seems relevant in trying to decide what rights can never be infringed, and what rights can be infringed for a price.



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to explain bureaucratic decisions to outraged citizens, thereby calming the furor and supporting the bureaucracy (In virtually every experiment 80-90% of the complaints have been unfounded, or based upon a misunderstanding).

4. All these can and should be buttressed with personal liability for damages to the citizen. Under present law, personal liability lies against a bureaucrat for violation of civil rights, for wiretapping, and, I believe, for racial discrimination. Property damage and the like are - with rather large exceptions - levied against the United States Govt under the Tort Claims Act. By increasing the personal civil liability of bureaucrats, one would certainly increase their personal consideration for each act, and reduce the tendency to follow orders which may be illegal or unwise. On the other hand, the widespread fear is that as personal liability and constraint increases in public positions, fewer and fewer active, imaginative people will want to be involved. Not a problem we need be concerned with at this point, but in a more democratic and political society might reach a level of concern.



Examples of the former come from the Bill of Rights: the right of free speech, the right of assembly, the right of freedom from search and seizure, habeus corpus, etc. At present, under 42 USC 1983 these rights give rise to civil actions against federal officials both for damages and for an injunction against continued infringement. A variety of judicially defined immunities (discretionary v. mandatory acts, within the scope of office, etc.) have been erected over the years to protect officials from bearing the true weight of these protections. Moreover, the courts, particularly in recent years, have been reluctant to grant injunctive relief to anything other than infringement of property rights. Finally, juries often seem reluctant to enforce such suits against the police, for example, although this spirit has changed radically in the past few years in big cities.

In any decentralized society the personal rights of the Bill of Rights would be supplemented with others. A right to a minimum income (or a minimum standard of living), a right to housing, a right to a decent environment, perhaps a right to employment or employment training. Charles Reich has suggested that the best way to add such rights to the Constitutional schema is to consider federal grants as property rights, "The New Property," which can only be infringed with adequate compensation and procedural guarantees.

Note that there will be a distinction between rights: a person deprived of a place to live under a plan should have standing to enjoin the entire plan until adequate housing is available. ~~and~~ A person forced to move from one house to another should not have injunctive rights, but simply a right to money damages. The distinctions would have to be laid out in some detail, or could be allowed to evolve through judicial decision to meet the needs of individuals as they arise.

Note also relationship between these rights and personal responsibility of bureaucrats mentioned above: most of these protections concern implementation and most would include criminal liability for offending officials.

B. The other tiers would define the scope of legal rights and limitations on citizens in different capacities. For example, within the corporation - whether worker-controlled or not - there would have to be a legal framework establishing the rights of the workers as a group - what administrative matters they can decide on their own, what right to strike, organize, negotiate, combine with other workers in other corporations or industries they might have. Also there would have to be a definition of the rights of each man or woman qua worker vis a vis the union or the management or both.

The present labor law gives some indication of how these should be conceptualized. The law guarantees the right to organize, by protecting workers from being fired for union organizing, and allowing them the right to receive organizers (these protections are minimal to say the least in application). XX For unionized companies, it sets up fair standards for negotiations between the union and the company: what questions can be negotiated, and what are considered management prerogatives, etc. Each contract then usually defines rights, grievance procedures and other protections for individual workers. Moreover, the federal law protects the rights of non-union members within a union factory, and of individual union members in relation to the union - all in the hope of maintaining union democracy.



In a decentralized, socialist model a similar framework might be established. Assume a corporation managed by a board of directors partially from the community (whether elected or appointed) and partially from the workers - the German model. A legal framework might define the levels in which issues are to be resolved. For example, within the production plan, workers at each level might have the right to ~~work out~~ decide how the work should be organized, divided, time schedules and the like. Due process rights for each worker might be established - e.g. grounds for firing, hearings, appeals etc.

The production plan for the corporation might then be considered a matter of negotiation between the workers and the board, or, in the case of a worker controlled factory, between the factory and the community planners. With differences in interest and perspective obvious, the question finally arises: how do workers and community groups affect the plan?

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The best model that I know of, which is far from adequate, is the notion of advocacy planning at all levels. For example, assume a regional indicative plan which provides an indication of energy allotments, <sup>directors partial</sup> job guarantees or <sup>interests</sup> production quotas for major industries in the community. Within these <sup>work</sup> targets, the community is free to plan development, expansion, and the full range of local services. The initial plan might be drawn up by planners appointed by the community corporation (town meeting, whatever). These suggestions might then be met with alternative plans developed by planners hired by one or more worker-controlled corporations, by environmental planners, by consumer groups. Each group would be forced to stay within the regional plan, and would be forced to plan for the entire community. Thus their individual interest would have to be reconciled with general interests so that the process of planning would demonstrate the trade-offs. The various plans could be presented in local hearings. The process could either be one of negotiation between the various groups, with final arbitration, if necessary, by the town council or town assembly, or one of straight up voting on the different plans.

*intending*

Within any corporation or group of corporations working together, the planners - hired by the union - would serve the same function as labor directors partial negotiators now do. That is, the planners would force the members to choose among their various desires, to order their values, to allow the planners to know what they should negotiate on, what is a minimum demand and the like. The process, of course, has not had particularly good results in unions, because over time the union management (the planners here) have a good idea of what they can get, and put a great deal of pressure on the workers to want what they can deliver (e.g. wage increases instead of restructured work environments).

Advocacy planning, of course, has had a rather dismal history in the United States at both a local level (urban redevelopment plans and the response of displaced communities) and at a national level (administrative boards which are forced to hold hearings to hear environmental or consumer



perspectives. Yet, in one form or another, the entire "populist" revival has concentrated on access to previously closed forum for advocacy presentations. Thus, the environmental movement has - through EPA - concentrated on forcing government bureaucracies to make environmental impact assessments, in the theory that if they think about such matters they might not do ~~them~~ so many ruinous things. Similarly, ~~the EPA and the FDA and~~ most of Nader's work for example with the FTA and FDA, has been ~~to~~ force hearings at which consumer advocates can present alternative versions of facts and values and seek administrative determination on those values. Also, the notion of placing consumer, minority, environmental or worker spokesmen on the board of directors of companies is based on the theory that advocacy of a different perspective at that level might encourage different decisions based on more than pure profit, expansion, or managerial recommendation.

The difference between these models and the one sketched above is that the final determination might be made not by "experts" appointed by virtue of capital investment or executive choice, but by councils of workers, or communities - at least at a local level, and by elected officials at a regional level.

(Note: although the regional plan was a given in the above model, it might also be the result of advocacy-negotiation-planning, with various regionally federated industries, and communities making presentations with regional planners.)

Although these comments are very ~~scattered~~ scattered, it seems possible  
and desirable to create a framework which forces each interest to plan for  
the entire body (whether community or region) and thus forces each specific  
interest to consider the trade-offs produced by asserting their interest. Such  
a process might increase empathy, reduce selfishness and all that. It will  
not avoid conflicts in values, plans and outlooks, which opens up the most  
difficult question.

Assume that a local corporation demands a 10% wage increase, and a 10%  
cut in the work week with reduced production and "profit" for the community,  
and the workers are quite willing to support a plan which cuts out community

✓ 10 factors

parks, housing for the unemployed, street repair or what have you. Does the corporation have the right to strike? If so, what will the various pressures be on the two sides to settle (e.g. will workers continue to get a minimum income, will a one-corporation town simply be held up at will by the workers etc.). If not, what legal remedies will be invoked to stop strikes (which are probably inevitable). In a sense, outlawing the right to strike can be seen simply as a price tag - the city places a price on police for striking of fines, criminal liability for leaders etc. - because there is no other price which equalizes bargaining power (the loss of pay not nearly as disastrous as the loss of police for the community). Perhaps, different workers might be treated differently: community owned cooperatives have the right to strike; police and firemen do not. Notice that in a planning situation when everyone must define their value choices, ~~arbitrary~~ arbitration turns out to be simply arbitrary - some body - judge, public official, mediator - simply chooses between two sets of values, presumably on their own values. A somewhat different situation than the present one where choices are hidden or structured, and "neutral" reasons can be invented for arbitration choices.



Other points at 11:55:

1. A procedure for a referendum of the community as a final arbiter?
2. Can planning be made simple enough to let citizens-workers into planning process more directly?

3. The more rights given to individuals, the more claims made on city resources which are beyond bargaining process, the less leeway for compromise community-worker splits, the more anger from workers forced to support poor, aged and unemployed???

Or is this masked by federal level of taxation?